

Claimant, on the other hand, requests the Appeals Board (Board) to affirm the ALJ's preliminary hearing Order. Claimant contends he proved through physicians' medical records and reports that his need for past and future medical treatment and the reason he is temporarily and totally disabled is related to his January 2000, work-related accident and not a new and separate accident after he returned to work on August 15, 2000. Thus, since January 2000, is the accident date, then claimant contends notice and written claim are computed from that date and, as such both were timely.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the preliminary hearing record, and considering the parties' briefs, the Board makes the following findings and conclusions:

This is the second preliminary hearing and preliminary hearing Order that has been entered in this case. The first preliminary hearing was held on May 17, 2001, and resulted in the preliminary hearing Order of the same date. In that preliminary hearing Order, the ALJ found claimant suffered bilateral upper extremity and neck injuries as a result of his work activities while employed by the respondent. The ALJ ordered respondent to provide medical treatment for those injuries with J. Stanley Jones, M.D. and to pay all past medical expenses as authorized expenses.

Respondent timely requested Board review of the May 17, 2001, preliminary hearing Order. In a July 31, 2001, Order, the Board affirmed the ALJ's preliminary hearing Order in regards to a January 5, 2000, accident.<sup>1</sup> But the Board reversed the ALJ's preliminary hearing Order for the alleged series of accidents through January 2001. The Board concluded that claimant aggravated a preexisting condition from a series of new accidents after he returned to work on August 15, 2000, up to and including January 2001. The Board then found claimant had failed to give respondent timely notice of accident for the new series of accidents through January 2001.

Before the May 17, 2001, preliminary hearing, claimant had been examined and treated by neurosurgeon Paul L. Stein, M.D. and orthopedic surgeon Dr. Jones. Dr. Stein first saw claimant on February 17, 2000, for discomfort in claimant's neck, right shoulder and numbness and tingling in the fourth and fifth fingers of his right hand. Dr. Stein had claimant undergo diagnostic testing that consisted of a cervical myelogram and a post-myelogram CT scan. The doctor found degenerative changes at both the C5-6 and C3-4 vertebrae levels. Dr. Stein felt this condition could be contributing to claimant's right shoulder pain and neck discomfort. He prescribed an epidural steroid injection at the C5-6 and then referred claimant to Dr. Jones for claimant's right shoulder and right hand problems.

Dr. Jones found claimant with bilateral carpal tunnel syndrome and ulnar nerve compression. In the spring of 2000, Dr. Jones performed bilateral carpal tunnel releases and right ulnar nerve transposition. He released claimant to return to work without restrictions on August 15, 2000. Claimant continued to work for respondent until January 2001 when he left work because of a right knee injury not related to this claim.

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<sup>1</sup> The claimant testified he first experienced problems with his upper extremities while working for the respondent on January 8, 2000. But respondent's report of accident indicates a January 5, 2000, date of accident. Prel. Hrg. Trans., May 17, 2001, p.7 and Resp.'s Exhibit 2.

Claimant returned to see Dr. Jones while he was off work with the right knee injury on April 16, 2001. At that time, claimant had complaints of bilateral arm numbness, wrist weakness, aching in both elbows and hand numbness. Dr. Jones referred claimant for EMG/NCT testing that showed significant EMG changes suggesting chronic denervation with marked pseudomyotonia. Dr. Jones felt the pseudomyotonia was probably related to claimant's continuing neck problems.

Claimant was then referred to neurosurgeon E. O. Abay, II, M.D. Dr. Abay saw claimant on July 27, 2001. After examining the claimant and reviewing the previous diagnostic testing, Dr. Abay diagnosed claimant with cervical stenosis and myelopathy at C3 through C6. On August 1, 2001, claimant underwent a decompression laminectomy from C3 through C6. At the time of the November 6, 2001, preliminary hearing, claimant remained off work recovering from the cervical surgery.

At the November 6, 2001, preliminary hearing, claimant offered and the ALJ admitted medical records and reports from treating physicians Drs. Jones, Stein, and Aby. In addition, claimant's attorney had sent claimant for an independent medical evaluation to Pedro A. Murati, M.D. Dr. Murati examined the claimant on August 29, 2001. Dr. Murati opined that claimant's carpal tunnel syndrome and neck problems occurred in 2000 and returning to work had no affect on his neck, carpal tunnel syndrome, or ulnar nerve problem.

Dr. Stein opined that the surgery performed by Dr. Abay on claimant's cervical spine was the product of the January 5, 2000, injury for which Dr. Stein evaluated claimant on February 17, 2000. Dr. Stein examined claimant on May 11, 2001, before Dr. Abay operated on claimant's cervical spine on August 1, 2001. Dr. Stein further opined that his findings from the examination on May 11, 2001, were essentially the same as his findings during the February 17, 2000, examination.

Dr. Jones also opined in a letter to claimant's attorney dated August 17, 2001, that claimant's carpal tunnel syndrome and neck problems both occurred in 2000 and returning to work had no affect on his neck, carpal tunnel syndrome, or ulnar nerve problems.

Finally, Dr. Abay reviewed Dr. Jones' and Dr. Stein's medical records and opined that the February 9, 2000, MRI findings and the March 6, 2000, myelogram CT findings were the same findings as reported from the recent May 24, 2001, MRI examination.

Claimant did not provide any additional testimony at the November 6, 2001, preliminary hearing. The ALJ found that the opinions of Drs. Stein, Jones, Abay and Murati persuasive and concluded that claimant's upper extremity injuries and cervical injury were related to his January 2000 work accident and claimant had not suffered a new and separate accident after he returned to work for respondent in August 2000. The Board agrees and finds this conclusion is supported by the necessity of claimant

having to have surgical intervention in the spring of 2000 performed by Dr. Jones for bilateral carpal tunnel syndrome and ulnar nerve injuries resulting from the January 2000 work-related accident. Additionally, the cervical decompression laminectomy surgery performed on August 1, 2001, was also the result of the January 2000 work-related accident as evidenced by the objective diagnostic testing results which showed that claimant's cervical condition before he returned to work on August 15, 2000, was the same as existed after he left work in January 2001.

The Board, therefore, finds that the ALJ's preliminary Order should be affirmed. The current medical evidence proves that claimant's upper extremity injuries and cervical injury were related to his January 2000 work-related accident and claimant had not suffered a new and separate accident after he returned to work in August 2000.

Thus, for the January 2000 work-related accident, as found in the Board's July 31, 2000, Order, claimant gave respondent timely notice of accident and served respondent with timely written claim for compensation.

As provided by the Workers Compensation Act, preliminary hearing findings are not final but are subject to modification upon a full hearing on the claim.<sup>2</sup>

**WHEREFORE**, the Board finds that ALJ John D. Clark's November 6, 2001, preliminary hearing Order, should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April 2002.

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BOARD MEMBER

c: David H. Farris, Attorney for Claimant  
Lyndon W. Vix, Attorney for Respondent  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Workers Compensation Director

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<sup>2</sup> See K.S.A. 44-534a(a)(2).